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Public Service Commission of Wisconsin
RECEIVED 04/04/09 2:19:45 PM

April 4, 2009

VIA ERF AND EMAIL ATTACHMENT

Hon. Michael Newmark
Public Service Commission of Wisconsin
610 North Whitney Way
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**Re: Application of Wisconsin Power and Light Company and Wisconsin
Electric Power Company for a Certificate of Authority to Install a
Selective Catalytic Reduction System for NOx Removal on Unit 5 at
the Edgewater Generating Station, Sheboygan County, Wisconsin**

Docket No. 5-CE-137

Dear Judge Newmark:

Enclosed please find Sierra Club's Agreed Motion for Entry of Stipulated Protective Order Regarding Confidential Information and Documents in the above-captioned case. Thank you for your attention to this matter.

Sincerely,

GARVEY McNEIL & MCGILLIVRAY



David C. Bender
Attorney for Sierra Club

Encl.

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**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

**Application of Wisconsin Power and
Light Company and Wisconsin
Electric Power Company for a
Certificate of Authority to Install a
Selective Catalytic Reduction System
for NOx Removal on Unit 5 at the
Edgewater Generating Station,
Sheboygan County, Wisconsin**

Docket No. 5-CE-137

**AGREED MOTION FOR ENTRY OF STIPULATED PROTECTIVE ORDER
REGARDING CONFIDENTIAL INFORMATION AND DOCUMENTS**

Pursuant to Wis. Stats. §§ 227.45(7), 227.46 and Wis. Admin. Code PSC §§ 2.12(7), 2.23, 2.24, Sierra Club respectfully requests that the attached Stipulated Protective Order Regarding Confidential Information and Documents be entered. Sierra Club and Wisconsin Electric Power Company (WEPCO) have conferred and agree that good cause exists for entry and that the stipulation will facilitate discovery in this case. Sierra Club is authorized to state that WEPCO concurs in this motion.

The parties and Commission staff, through their respective counsel of record, have been served with this motion.

Respectfully submitted this 4th day of April, 2009.

GARVEY MCNEIL & MCGILLIVRAY, SC

/s David C. Bender

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**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

**Application of Wisconsin Power and
Light Company and Wisconsin
Electric Power Company for a
Certificate of Authority to Install a
Selective Catalytic Reduction System
for NOx Removal on Unit 5 at the
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Docket No. 5-CE-137

**STIPULATED PROTECTIVE ORDER REGARDING
CONFIDENTIAL INFORMATION AND DOCUMENTS**

It is hereby ordered that this Stipulated Protective Order Regarding Confidential Information and Documents (“Protective Order”) shall apply with respect to certain documents and other information produced and/or disclosed in connection with the above-captioned litigation (the “Litigation”).

1. Entry of this Protective Order is appropriate because Wisconsin Electric Power Company (“WEPCO”) believes that information and documents relevant to the allegations and defenses in this matter may disclose highly sensitive business and other confidential information. Sierra Club’s signature to this Protective Order does not reflect agreement by Sierra Club that WEPCO’s claims for confidential treatment are valid or that the documents for which WEPCO asserts protection under this agreement should be withheld from the public. Under this Protective Order, Sierra Club and WEPCO (individually “Party”; collectively “Parties”) may seek documents and information from non-Parties that such non-Parties consider confidential and the Parties intend for such non-Party confidential information to be disclosed under the terms of this Protective Order.

2. The procedures described herein shall be adopted with respect to certain documents and other information produced and/or disclosed in the Litigation. This Protective Order shall apply to all Discovery Material (as defined in Paragraph 3, below) that is produced or otherwise obtained in this action and that any Party or non-Party marks as “CONFIDENTIAL” in accordance with this Protective Order.

Confidential Information

3. For the purpose of this Protective Order, “Discovery Material” shall mean all documents, deposition testimony, or other information produced, subpoenaed, transcribed from depositions, or otherwise given to any Party in this Litigation by another Party or a non-Party in connection with discovery (whether in the form of deposition transcripts, interrogatory answers, document productions, responses to requests to admit, or any other form).

4. For the purpose of this Protective Order, “Confidential Information” shall mean Discovery Material containing financial and business information, marked as “CONFIDENTIAL” in accordance with Paragraph 9 or 10, which constitutes confidential business or trade secret information entitled to confidential treatment pursuant to Wis. Stat. §§ 134.90(1)(c), 196.14 or 804.01(3)(a)(7), or any other statute, regulation, or common law rule providing a legal basis to restrict disclosure, and any copy, excerpt or summary thereof, or the information contained therein, subject to a Party’s right to challenge such designation as set forth in Paragraph 14. No Confidential Information, or the information contained therein, shall be delivered or disclosed to any person except as provided herein. In order to proceed most expeditiously, and not wanting further delay to occur in WEPCO’s production of documents, the Parties agree that the Discovery Material produced by WEPCO in this Litigation prior to the

Hearing Examiner or PSC's approval of this Protective Order will be protected under this Protective Order.

5. If any non-Party receives a request, subpoena or subpoena duces tecum requesting documents or tangible things and the requested documents or tangible things contain Confidential Information, then the non-Party may designate such material as confidential in accordance with Paragraph 8. Confidential Information designated by a non-Party as "CONFIDENTIAL," or any copy, excerpt, or summary thereof, or the information contained therein, shall be subject to all of the conditions and limitations set forth in this Protective Order. Any non-Party that desires to protect its claim of confidentiality by adhering to these procedures submits to the jurisdiction of this Hearing Examiner or PSC with regard to any proceedings related to the non-Party's claim of confidentiality and bears the burden of establishing its claim to confidentiality in such proceedings.

6. No Confidential Information shall (a) be used for any business, commercial, competitive, personal, or other non-regulatory or non-litigation purposes; or (b) be disclosed by the person receiving it to any other person without the prior written consent of the designating Party or an order of the Hearing Examiner or PSC, except to the following:

- i. This Public Service Commission and its employees, including, without limitation, court reporters, counsel, executive assistants, and law clerks, provided that the Confidential Information is filed in accordance with the terms of this Protective Order;
- ii. Stenographers or other persons preparing transcripts of testimony;
- iii. Outside vendors, including their employees, retained by Counsel for either Party to provide copying, data entry, data processing, or computer imaging, and similar clerical support services; and
- iv. Any reviewing court that may have jurisdiction to review the proceedings and/or decisions before the Public Service Commission in this case.

7. With the exception of those persons designed in Paragraph 6, Confidential Information, or any copy, excerpt, or summary thereof, or the information contained therein, received from a Party or non-Party, shall not be disclosed to any person unless: (a) such person has been provided with a copy of this Protective Order, and (b) such person has agreed to be bound thereby and executed the agreement attached hereto as Exhibit A. The foregoing requirement applies, without limitation, to: (w) the Parties and the Parties' employees; (x) the Parties' counsel and counsel's employees; (y) witnesses and potential witnesses, whether lay or expert; and (z) litigation consultants and contractors. Notwithstanding the foregoing, documents may be handled by clerical personnel in the employ of any Party or Non-Party that has executed the agreement who are performing purely clerical duties, such as mail handling, copying, bates stamping, filing, etc., without such personnel signing the agreement attached hereto as Exhibit A. Persons indicated on the face of Confidential Information as having been the authors or recipients of such documents need not execute Exhibit A before being provided access to such information. The agreement, attached hereto as Exhibit A, shall provide for the return of all copies of the Confidential Information, not previously destroyed, at the conclusion of this Litigation, including any appeals therein, to Counsel for the Party that provided the copy. Counsel for each Party shall obtain and retain executed copies of the agreements attached as Exhibit A from each person to whom it discloses any Confidential Information other than its own Confidential Information. Sierra Club shall not disclose Confidential Information provided to it by WEPCO to any person or entity that Sierra Club knows is a competitor of WEPCO or provides services to a competitor of WEPCO.

8. Any Discovery Material considered by a Party or non-Party to be confidential or to contain Confidential Information shall be marked "CONFIDENTIAL" in a readily visible or

noticeable manner. In the case of documents, interrogatory responses, and responses to requests for admission, Confidential Information shall be designated by a stamp or designation on each such document or response prior to production or service. Any Party photocopying or otherwise duplicating Confidential Information shall ensure that the "CONFIDENTIAL" designation appears clearly on any such copies or duplicates.

9. Whenever Confidential Information is to be referred to or disclosed in a deposition, any Party or non-Party may exclude from the room during such testimony any person who is not authorized to receive Confidential Information under this Protective Order. Any testimony given in any deposition may be designated as "CONFIDENTIAL" by any Party or non-Party by making such designation on the record. A Party or non-Party may also make such designation in writing to the court reporter if the designations are made within fourteen (14) days after the transcript has been made available to the Party or non-Party making the designations, and notice of such designations is sent to all Counsel of Record. At the requestor's expense, the reporter shall then separately transcribe those portions of the testimony so designated and shall mark the face of the transcript with the words "CONFIDENTIAL," and seal it in a separate envelope. Whenever any Confidential Information is identified as an exhibit in connection with testimony given in any deposition proceeding in this Litigation, it shall be so marked, if it has not previously been marked, and appropriately sealed. Only persons who have executed the agreement attached hereto as Exhibit A or those persons excepted from such requirement by Paragraphs 6 and 7 shall be entitled to obtain copies of that portion of the transcript and/or exhibit.

10. All Parties, their Counsel, and all persons designated in Paragraphs 6 and 7, above, who obtain Confidential Information shall take all necessary and appropriate measures to

maintain the confidentiality of the Confidential Information, shall disclose such information only to persons authorized to receive it under this Protective Order, and shall retain such information in a secure manner.

11. Whenever Confidential Information is to be referred to or disclosed in a hearing, any Party or non-Party may move in accordance with the applicable rules of evidence and procedure that the Public Service Commission and/or Hearing Examiner exclude from the room those persons who are not authorized to receive Confidential Information under this Protective Order. In addition, any Party or non-Party may move for a designation of any testimony given in such hearing as "CONFIDENTIAL."

12. In the event the Parties wish to file documents deemed in this Order as Confidential, the party shall file them under seal and shall follow the Public Service Commission's procedures for confidential filing.

13. Should any non-Party seek disclosure of Confidential Information from either Sierra Club or WEPCO by way of subpoena or bona fide discovery request ("Discovery Request"), the Party receiving such Discovery Request shall, by hand delivery or facsimile transmission, send that portion of the Discovery Request relating to the request for Confidential Information to the Counsel for the other Party asserting confidentiality promptly upon concluding that such Discovery Request may call for the production of Confidential Information. (Notice shall also be given to Counsel for the Parties if the Party who has asserted confidentiality is a non-Party.) Unless the Party asserting confidentiality affirmatively allows release of its information to the non-Party in writing, the non-Party will be informed that the documents requested are Confidential Information protected by this Agreement and the Party from whom Confidential Information is requested shall not produce it absent an order compelling it to do so.

The party receiving a Discovery Request shall reasonably cooperate with the party asserting confidentiality to allow the asserting party to intervene or otherwise move to protect its Confidential Information from disclosure. The party asserting confidentiality agrees to pay any costs and/or attorney's fees assessed against the party receiving a Discovery Request to the extent that the party receiving the Discovery Request is ordered to pay such costs and/or attorney's fees in conjunction with an order compelling disclosure of Confidential Information.

14. Any Party may at any time notify a Party or non-Party asserting a claim of Confidentiality, in writing, or in the case of a deposition, either upon the record of a deposition or in writing later, of the Party's objection to the designation of any information, documents, or testimony as "CONFIDENTIAL." In that event, the challenging and designating Parties shall attempt to resolve any challenge in good faith on an expedited and informal basis. If the challenge cannot be expeditiously and informally resolved, either the designating Party (or non-Party) or the challenging Party may apply for an appropriate ruling from the Hearing Examiner and/or the Public Service Commission. In any such application for a ruling or confidentiality determination, the designating Party (or non-Party) shall have the burden of proof to establish that the designated material is in fact confidential and is entitled to confidential treatment. The information at issue shall continue to be treated as Confidential Information pursuant to this Protective Order until the Parties agree or the Hearing Examiner or Public Service Commission rules otherwise. No Party in the Litigation shall be obliged to challenge the propriety of the designation of any Confidential Information. Failure to bring such challenge shall not preclude any subsequent objection to the designation and shall not preclude any motion to seek permission from the designating Party or the Hearing Examiner or PSC to disclose such Confidential Information to persons not referred to in this Protective Order.

15. Inadvertent disclosure of Confidential Information shall not be deemed a violation of the provisions of this Protective Order and shall not be deemed to waive a Party's claim that such information is Confidential Information, but all reasonable steps shall be taken to protect such inadvertently disclosed information after notification is received in accordance with this Protective Order.

16. Throughout and after the conclusion of this Litigation, including any appeals, the restrictions on communication and disclosure provided for herein shall continue to be binding upon the Parties and all other persons to whom Confidential Information has been communicated or disclosed pursuant to the provisions of this Protective Order or any other order of the Hearing Examiner and/or Public Service Commission.

17. Nothing in this Protective Order shall prevent any Party from seeking amendments broadening or restricting the rights of access to, or the use of, Confidential Information, or otherwise modifying this Protective Order. This Protective Order may be amended by the agreement of Counsel for the Parties in the form of a filed stipulation and approval by the Hearing Examiner and/or Public Service Commission.

18. This Protective Order is designed to facilitate the disclosure of documents in this Litigation that a Party or non-Party considers to be "Confidential Information." It does not constitute a determination that documents or information so designated are "Confidential Information." Nothing in this Order shall prejudice in any way the right of any Party to seek a determination of whether particular documents, information or testimony are confidential business information that should remain subject to the terms of this Protective Order.

19. This Protective Order will not be interpreted to and is not intended to keep Motions, Memoranda, Supporting Motions, Orders, and other filings with the Hearing Examiner

or PSC under seal or confidential. Information within PSC and/or Court filings that contain Confidential Information that is protected under this Protective Order, however, must be redacted by the Parties from the public copy of such filings.

20. Nothing in this Protective Order shall limit or affect the right of a designating Party to disclose, to authorize disclosure of, or to use in any way, its own Confidential Information.

21. If Counsel for either Party retains Confidential Information produced by the other Party, it shall continue to be subject to this Protective Order so long as the Confidential Information is retained by such Counsel.

22. Counsel for the Parties shall use their best efforts to ensure that the provisions of this Protective Order are adhered to by the Party they represent and by those acting on its behalf.

IT IS SO ORDERED this ____ day of _____, 2009.

Michael E. Newmark
Administrative Law Judge

All parties have consented to the terms of this Protective Order and consented to the filing of the Protective Order electronically with the Commission. Furthermore, the Sierra Club authorizes its counsel to electronically sign the Protective Order on its behalf. WEPCO authorize its counsel to electronically sign the Protective Order on its behalf.

AGREED:

SIERRA CLUB

By: 

GARVEY McNEIL & MCGILLIVRAY, SC
David C. Bender
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AGREED:

Wisconsin Electric Power Co.

By: 

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Email: Catherine.Phillips@we-energies.com

EXHIBIT A

**CONFIDENTIALITY AGREEMENT PURSUANT
TO PROTECTIVE ORDER**

The undersigned, _____, hereby acknowledges that I have received a copy of the Stipulated Protective Order Regarding Confidential Information and Documents entered or to be entered in this action, to which this Agreement was attached as Exhibit A, have read it, and agree to be bound to the terms of the Protective Order, and any amendments thereto as if fully set forth herein, including, without limitation, that I shall not use Confidential Information or any copy, excerpt, or summary thereof, or the information contained therein, for any purpose not permitted by the Protective Order; that I shall return to Counsel supplying me with said Confidential Information, at the earlier of the end of my involvement or the conclusion of this Litigation, including any appeals therein, all copies of such Confidential Information that has been provided to me, including all notes, abstracts, summaries and excerpts prepared from Confidential Information that have not previously been destroyed by me and certify to such Counsel that all Confidential Information in my possession has been returned to such Counsel or destroyed; that I shall not make any copies of Confidential Information for any purpose not permitted by the Protective Order; that, if I have received Confidential Information from the Sierra Club, I am not employed by a competitor of WEPCO or provide services to a competitor of WEPCO; and, that I shall not provide Confidential Information to anyone else who has not executed this Agreement or who, pursuant to paragraphs 6 and 7 of the Protective Order is entitled to receive Confidential Information without executing this Agreement. I further understand that I shall remain bound by the Protective Order after the conclusion of this Litigation unless otherwise ordered by the Hearing Examiner or PSC.

Dated: _____

Signature: _____

Printed Name: _____

Address: _____
